



No. 7489



IN THE  
**United States**  
**Circuit Court of Appeals**

FOR THE NINTH CIRCUIT. 7

GALEN H. WELCH, Collector of Internal Revenue for the Sixth Collection District of California,

*Appellant,*

*vs.*

THE KERN RIVER OILFIELDS OF CALIFORNIA, LTD., a corporation,

*Appellee.*

On Appeal From the District Court of the United States, for the Southern District of California,

**BRIEF FOR THE APPELLANT**

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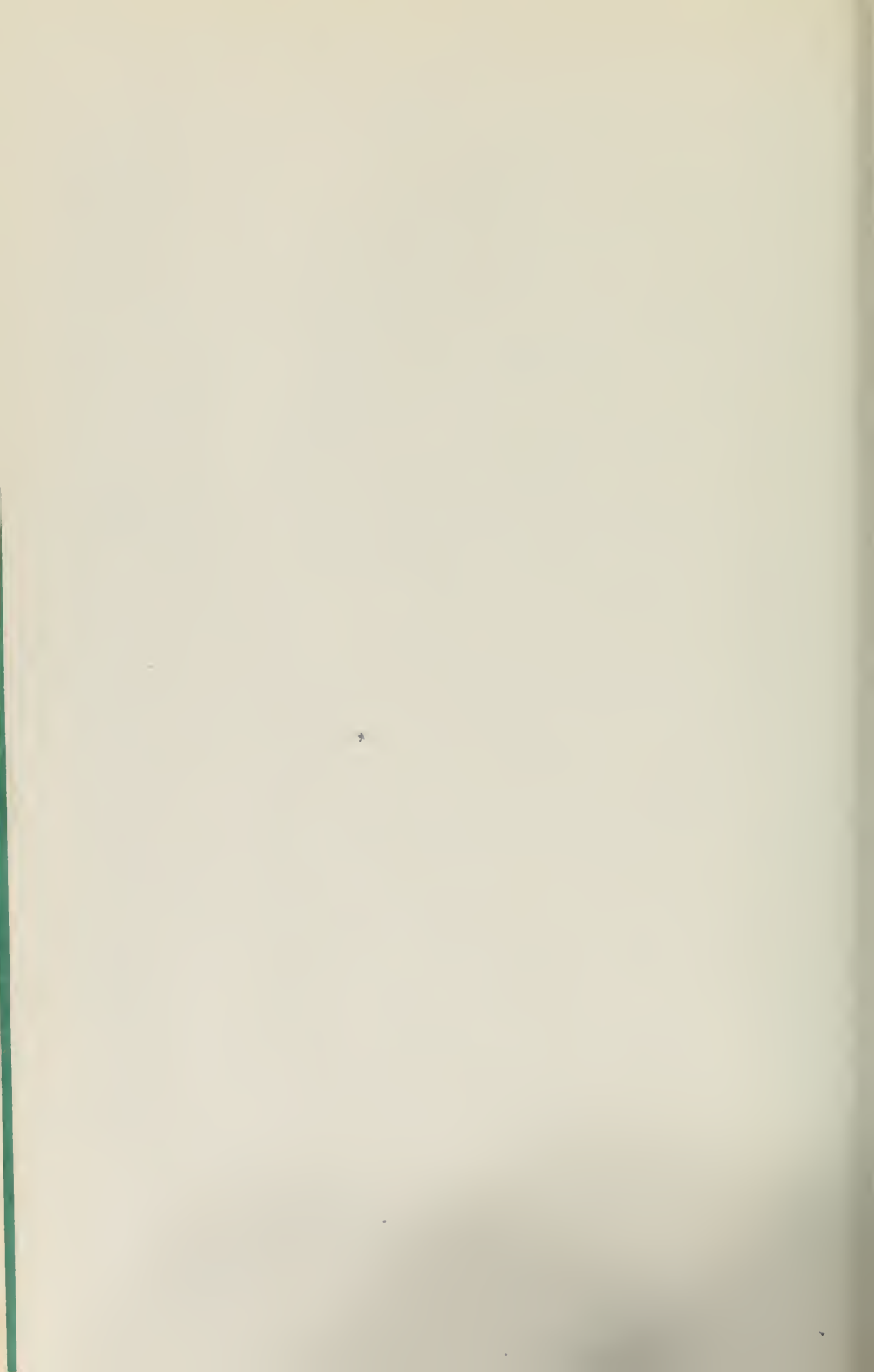
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*Appellant.*

v's.

THE KERN RIVER OILFIELDS OF CALIFORNIA, LTD., a corporation,

*Appellee.*

**BRIEF FOR THE APPELLANT**

**Opinion Below**

The only previous opinion in the present case is that of the District Court of the United States for the Southern District of California (R. 36-37), which is unreported.

**Jurisdiction**

This appeal involves income taxes of The Kern River Oilfields of California, Ltd., a corporation, for the fiscal year ended May 31, 1925 (R., 28-29), and is taken from a judgment of the District Court in favor of the taxpayer entered November 8, 1933 (R., 23-24). The appeal is brought to this Court by petition for appeal on

behalf of the Collector of Internal Revenue filed February 8, 1934 (R., 51), pursuant to Section 128 (a) of the *Judicial Code*, as amended by the Act of February 13, 1925.

### Questions Presented

1. Whether a British corporation, doing business in the United States, is entitled to deduct from gross income, income taxes paid to Great Britain when such income taxes were deducted from dividends paid to its stockholders.

2. Whether the judgment is supported by the findings.

### Statutes and Regulations Involved

The applicable provisions of the Revenue Act of 1924 and of Treasury Regulations 65 will be found in the Appendix, *infra*, pp. 1-3. The applicable statutes of Great Britain will be found in Appendix B in appellant's brief in the case of *Galen H. Welch, Collector, v. The St. Helens Petroleum Company, Ltd., a corporation*, No. 7488, now pending before this Court.

### Statement

The facts were stipulated. (R., 28-35.) The appellee is a corporation organized under the laws of Great Britain, having an office and place of business at Los Angeles, California (R., 28), whose income from sources within the United States during the fiscal year ended May 31, 1925, was 86.93 per centum of its total income from all sources during that year. (R., 30.)

During the fiscal year ended May 31, 1925, appellee accrued and paid to the government of Great Britain an income tax amounting to £5,550-6-0 Sterling, which at the rate of \$4.61 was the equivalent of \$25,586.88 in United States currency, of which appellee deducted from dividends paid by it to its stockholders during said fiscal year an amount of at least \$22,242.68 on account of said British income taxes. (R., 30-31.)

In its income tax returns for the fiscal year ended May 31, 1925, appellee reported a tax due therein of \$15,611.33, which was duly assessed and paid to Rex B. Goodcell, then Collector of Internal Revenue for the Sixth Collection District of California. (R., 29.) Upon amended income tax returns thereafter filed there was duly assessed against appellee and paid to appellant an additional tax amounting to \$5,203.77. (R., 29.)

On or about September 26, 1926, appellee filed with the Commissioner of Internal Revenue a claim for refund of \$1,956.72 of the tax paid for the fiscal year ended May 31, 1925, claiming that said amount was erroneously assessed because it represented the difference between the tax reported on the original return and that shown upon a corrected return alleged to have been filed in accordance with the Revenue Act of 1926. (R., 6-7.) Thereafter on or about November 8, 1928, appellee filed with the Commissioner of Internal Revenue a claim for refund of \$12,817.57 of the tax paid for the same fiscal year, claiming additional deductions allowable of \$3,560.16 on account of London offices expenses; \$33,350.58 on account of British tax deducted from divi-

dends of St. Helens Petroleum Company, Limited; and \$25,586.88 on account of British income taxes (representing amounts deducted from dividends paid to its stockholders). (R., 7-8.) The Commissioner allowed appellee's claim for refund to the extent of \$4,825.16, and rejected it to the extent of \$7,992.41. (R., 30.) No other deductions were claimed by appellee in its claim for refund (Ex. 7, 8), or in the complaint (R., 4-11). The Commissioner has allowed no deduction on account of said British income taxes for the fiscal year ended May 31, 1925. (R., 31.) Appellee contended, and appellant denied, that appellee was entitled to such deduction, but it was agreed that if said British income taxes were deductible, the amount of such deduction for the fiscal year ended May 31, 1925, was \$22,242.68. (R., 30-31.) This amount was allowed as a deduction by the court. (R., 21, 44.)

Upon the basis of the disallowance by the Commissioner of appellee's claim for refund to the extent of \$7,992.41 (R., 30), this suit was commenced on November 6, 1930, for the recovery of \$2,926.79 (R., 4-11).

By stipulation a jury was waived, and the case was tried by the court without the intervention of a jury. (R., 27.) At the close of all the evidence counsel for appellant moved for judgment in favor of the appellant (R., 32), and on September 21, 1933, the court, by minute entry, ordered judgment in favor of the appellee (R., 36-37). The appellant filed request for special findings of fact and conclusions of law (R., 38-40), which were denied by the court (R., 45). The findings adopted



by the court (R., 19-22) were those requested by the appellee (R., 41-45).

The court held that the appellee was entitled to a deduction of \$22,242.69 on account of dividends paid to the government of Great Britain and deducted from dividends to its stockholders (R., 22), and on this basis rendered judgment for the appellee for \$2,926.79 (R., 23-24). From the judgment for appellee the appellant has appealed. (R., 51.)

### Specifications of Errors to be Urged

The court erred (R., 52-56):

1. In rendering judgment against the appellant and in favor of the appellee in the amount of \$2,926.79, together with interest at the rate of six per cent (6%) on \$1,956.72 from September 10, 1926, and on \$970.07 from May 12, 1926, with costs taxed at \$20, in that the evidence introduced herein and the facts found therefrom by the court and the record in this cause are insufficient to support a judgment in favor of the appellee in said amount, or in any other sum or at all, for the reason that said evidence and the facts established and found by the court and the record disclose that appellee is a corporation organized under the laws of Great Britain which, during the fiscal year ended May 31, 1925, accrued and paid to the government of Great Britain an income tax equivalent to \$25,586.88 in United States currency; and that the appellee deducted from the dividends paid by it to its stockholders during said fiscal year an amount of at least \$22,242.68 on account of said British income taxes.

2. In rendering judgment against the appellant and in favor of the appellee herein for the reason that said judgment is not supported by the facts found by the court herein for the reason that the court found as a fact that during the fiscal year ended May 31, 1925, appellee accrued and paid to the government of Great Britain an income tax in the amount of £5,550-6-0 Sterling, which, at the rate of \$4.61, was the equivalent of \$25,586.88 in United States currency. The income of appellee from sources within the United States during the fiscal year ended May 31, 1925, was 86.93 per centum of the total net income of appellee from all sources during said year. The amount of the British income tax allocable to United States income was \$22,242.69. Appellee deducted from dividends paid by it to its stockholders during said fiscal year, an amount of at least \$22,242.69 on account of said British income taxes.

3. In refusing to adopt appellant's Proposed Finding of Fact Number I, which reads as follows (R., 54):

“That there was no substantial or sufficient evidence produced on behalf of the plaintiff upon which to support a Judgment in its favor in the above-entitled action.”

for the reason that the record and the evidence in this case support and require said Proposed Finding of Fact.

4. In refusing to adopt the appellant's Proposed Conclusions of Law numbered I and II, which read as follows (R., 54-55):

“That there was no substantial or sufficient evidence produced on behalf of the plaintiff upon which

to support a Judgment in its favor in the above-entitled action.

“That upon the law, the plaintiff is not entitled to recover any sum whatsoever from the defendant in the above-entitled cause.”

for the reason that the evidence introduced and the facts found by the court in this action require the adoption of said Conclusions of Law.

5. In concluding, as a matter of law, that the Commissioner of Internal Revenue erred in failing and refusing to allow the appellee a deduction on its income tax return for the fiscal year ended May 31, 1925, in the amount of \$785.46 for additional profits taxes accrued and paid to the government of Great Britain, and the amount of \$22,242.69 for income taxes accrued and paid to the government of Great Britain, and in levying tax assessments upon the basis of net income computed without the allowance of said deductions for the reason that the evidence introduced and the facts found therefrom by the court disclose that the amount of \$22,242.69 so accrued and paid to the government of Great Britain for income taxes by appellee was by it deducted from dividends paid by it to its stockholders during said fiscal year ending May 31, 1925.

6. In failing to find and conclude as a matter of law herein that no part of the amount of \$22,242.69, accrued and paid by the appellee to the government of Great Britain as an income tax during the fiscal year ended

May 31, 1925, and deducted by appellee from dividends paid by it to its stockholders during said fiscal year, was deductible from appellee's gross income for said year in computing the correct income tax due from it to the Government of the United States.

7. As a matter of law in not rendering judgment against the appellee and in favor of the appellant for his costs and disbursements expended herein.

### Argument

This appeal involves the identical questions that are presented in the third argument in the brief for the appellant in the case of *Galen H. Welch, Collector of Internal Revenue for the Sixth Collection District of California v. The St. Helens Petroleum Company, Ltd., a corporation*, No. 7488, now pending before this Court. The appellant's position is fully presented in the brief for the appellant filed in that case. It will, therefore, not be repeated here but is included herein by reference. Accordingly, copies of appellant's brief in *The St. Helens Petroleum Co., Ltd.*, case, No. 7488, are served herewith upon counsel for the appellee.

### Conclusion

For the reasons stated in the appellant's brief in *The St. Helens Petroleum Co., Ltd.*, case, No. 7488, it is urged that the decision of the court below in holding that amounts accrued and paid by the appellee to the government of

Great Britain as an income tax and deducted by appellee from dividends paid by it to its stockholders during the fiscal year was deductible from appellee's gross income for that year, was erroneous, and should be reversed.

Respectfully submitted,

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January, 1935.



## APPENDIX

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Revenue Act of 1924, c. 234, 43 Stat. 253:

SEC. 234. (a) In computing the net income of a corporation subject to the tax imposed by section 230 there shall be allowed as deductions:

\* \* \* \* \*

(3) Taxes paid or accrued within the taxable year except \* \* \* (B) so much of the income, war-profits and excess-profits taxes imposed by the authority of any foreign country or possession of the United States as is allowed as a credit under section 238,  
\* \* \*

\* \* \* \* \*

(b) In the case of a foreign corporation or of a corporation entitled to the benefits of section 262 the deductions allowed in subdivision (a) shall be allowed only if and to the extent that they are connected with income from sources within the United States; and the proper apportionment and allocation of the deductions with respect to sources within and without the United States shall be determined as provided in section 217 under rules and regulations prescribed by the Commissioner with the approval of the Secretary. (U. S. C., Title 26, Sec. 986.)

SEC. 238. (a) In the case of a domestic corporation the tax imposed by this title shall be credited with the amount of any income, war-profits, and excess-profits taxes paid or accrued during the same taxable year to any foreign country, or to any possession of the United States: *Provided*, That the amount of such credit shall in no case exceed the same proportion of the tax (computed on the basis of the tax-

payer's net income without the deduction of any income, war-profits, or excess-profits taxes imposed by any foreign country or possession of the United States) against which such credit is taken, which the taxpayer's net income (computed without the deduction of any such income, war-profits, or excess-profits tax) from sources without the United States bears to its entire net income (computed without such deduction) for the same taxable year. In the case of domestic insurance companies subject to the tax imposed by section 243 or 246, the term "net income" as used in this subdivision means net income as defined in sections 245 and 246, respectively.

\* \* \* \* \*

(U. S. C., Title 26, Sec. 990.)

Treasury Regulations 65:

ART. 611. *Credit for foreign taxes.*—This credit includes income, war-profits, and excess-profits taxes paid or accrued during the taxable year to any foreign country or to any possession of the United States, but shall not exceed the same proportion of the tax (computed on the basis of the corporation's net income without the deduction of any income, war-profits, or excess-profits taxes imposed by any foreign country or possession of the United States) against which the credit is taken, which the corporation's net income (computed without the deduction of any such income, war-profits, or excess-profits tax) from sources without the United States bears to its entire net income (computed without such deduction) for the same taxable year. To secure such a credit a domestic corporation must pursue the same course as that prescribed for an individual by article 383, except that Form 1118 is to be used for claiming credit and Form 1119



for the bond, if a bond be required. For the redetermination of the tax, when a credit for such taxes has been rendered incorrect by later developments, see article 384, all of the provisions of which apply with equal force to a corporation taxpayer. For credit where taxes are paid by a foreign corporation controlled by a domestic corporation, see article 612. A claim for credit in such a case is also to be made on Form 1118. For the meaning of the terms used in section 238 of the statute see section 2 and article 382. See article 387 with reference to the option granted by section 238 (c).

